

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of Pacific Gas and Electric Company (U 39 M) for Authorization Under Public Utilities Code Section 851 to Grant a Sublease to Fisher Nickel, Inc.

Application 03-11-021
(Filed November 24, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
REQUESTING ADDITIONAL INFORMATION AND BRIEFING**

I. Summary

On March 19, 2004, Pacific Gas and Electric Company (PG&E) filed a supplement to the above application responding to two questions from the Administrative Law Judge as well as modifying the relief sought by this application. This ruling directs PG&E to file further information and briefing regarding the relief PG&E now seeks from the Commission by April 12, 2004.

II. Background

In PG&E's application filed on November 24, 2003, PG&E sought an order from this Commission authorizing PG&E to grant a sublease to Fisher Nickel, Inc. (Fisher Nickel) pursuant to Pub. Util. Code § 851. The sublease attached as exhibit B to the application was not signed by either PG&E or Fisher Nickel, and is labeled a "proposed sublease." Thus, I interpret PG&E's application as requesting approval for PG&E to grant this sublease on a prospective basis.

In its supplement to the application, PG&E explains that the sublease between PG&E and Fisher Nickel provides that if administration of the Food Service Technology Center (FSTC) program transfers back to PG&E, the sublease immediately terminates. PG&E states that by Decision (D.) 04-02-059, issued on

February 26, 2004, the Commission selected PG&E's proposal to operate the FSTC as a PG&E program and awarded funding for the FSTC program, thereby effectively transferring administration of the FSTC program to PG&E. According to PG&E, the sublease between PG&E and Fisher Nickel terminated by its terms on February 26, 2004, the date of issuance of D.04-02-059.

As a result of these changed circumstances, PG&E has informed the Commission in its supplement that it no longer seeks prospective approval of the sublease. PG&E also states that "since the sublease relationship existed at the time of the filing of A.03-11-021, PG&E continues to seek approval pursuant to PU Code Section 851 of the sublease and its terms which triggered the automatic termination on February 26, 2003—the issuance date of D.04-02-059." (PG&E Supplement at p. 5.)

III. Additional Factual Information Required

PG&E should clarify the following facts which are relevant to its new request no later than April 12, 2004.

A. Effective Date of the Sublease

If the proposed sublease attached to PG&E's November 24, 2003 application as Exhibit B has taken effect, PG&E shall notify the Commission of its effective date.

B. Terms of Fisher Nickel's Tenancy

In its application, PG&E states that Fisher Nickel has occupied the premises since September 2002, but PG&E and Fisher Nickel were unable to come to terms on a sublease arrangement until September 2003. PG&E should state the terms of Fisher Nickel's tenancy from September 2002 until September 2003, and from September 2003 through February 26, 2004, and should clarify for which period of time it seeks Commission approval of the transaction.

IV. Additional Briefing

PG&E should brief the following issues no later than April 12, 2004.

1. Does General Order (GO) 69-C apply to this application? PG&E should address each of the three criteria under GO 69-C which may permit a utility to grant minor interests in utility property without Commission approval pursuant to Pub. Util. Code § 851: (a) the interest must be for a “limited use” of utility property; (b) the interest granted must not interfere with the utility operations, practices, and service to its customers; and (c) the interest granted must be revocable either upon the order of the Commission or upon the utility’s own determination that revocation is desirable or necessary to serve its patrons or consumers. (See i.e., D.04-01-029, 2003 Cal. PUC LEXIS 629; D.03-11-007, 2003 Cal. PUC LEXIS 555.)
2. Assuming GO 69-C is inapplicable, does Pub. Util. Code § 853 (b) apply to this application and if so, how?

IT IS RULED that Pacific Gas and Electric Company should file the factual information and brief requested in this ruling by April 12, 2004.

Dated March 30, 2004, at San Francisco, California.

/s/ JANET A. ECONOME

Janet A. Econome
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Requesting Additional Information and Briefing on all parties of record in this proceeding or their attorneys of record.

Dated March 30, 2004, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.